

# Wisconsin Karner Blue Butterfly Habitat Conservation Plan and Environmental Impact Statement

## Chapter 2: Statewide Karner Blue Butterfly Habitat Conservation Plan (HCP)

### H. Implementation Organization

This part of Chapter II describes the HCP partners' commitments to institutional arrangements for implementation of the HCP. It is divided into eight sections:

- ☞ DNR Organizational Structure for Implementation
- ☞ DNR-Partner Conservation Agreements
- ☞ Implementation Oversight Committee (IOC)
- ☞ Future Applications for Partner Status or Participation
- ☞ Permit Period
- ☞ Permit Amendments
- ☞ Permit Renewal
- ☞ USFWS "No Surprises" Policy

#### 1. DNR Organizational Structure for Implementation

The lead programs for the HCP within the DNR will continue to be the Land Division's Bureaus of Endangered Resources and Forestry. The focal position will be a full-time, permanent HCP Coordinator, stationed in the Bureau of Forestry, who will provide general project management and leadership within DNR, coordination and facilitation for both the DNR and the Implementation Oversight Committee (IOC), planning, process design, development and training, as well as related duties. A variety of other staff who will support the project are listed below under "DNR Commitments."

As the lead applicant for the Incidental Take Permit (ITP), the DNR will act as the permit administrator. In this capacity the DNR, among all other partners, will have the final authority and responsibility for decisions related to the ITP, although the agency will routinely seek advice from the partners and the Implementation Oversight Committee (IOC). In matters related to the implementation of the HCP, the DNR will share responsibility with the partners, most often through the IOC. This team, which represents the diverse interests of the partnership, is described below (pages 166-170). The IOC will operate within the Articles of Partnership (see Appendix C) and will act as an advisor to the DNR. As the permit holder, however, the DNR will be responsible for final decisions to assure the ITP is complied with and is not jeopardized.

**Authority.** The DNR has agreed to act as the lead applicant and permit administrator in accordance with any federal ITP issued. The DNR acts in this capacity under the authority of ss.

23.09 and 23.11, *Wis. Stats.*, regarding DNR's general powers; and 29.415, *Wis. Stats.*, the state endangered species law and s. 29.175, *Wis. Stats.*, regarding the protection and regulation of nongame species.

The DNR's implementation of the HCP is structured by an Implementing Agreement between the DNR and the USFWS. The agreement defines the roles and responsibilities of the DNR regarding implementation of the HCP and integration of other landowners or users, including the partners, with the DNR to obtain coverage under the ITP. The HCP and the Implementing Agreement are complementary to each other.

HCP partners, other than the DNR (lead applicant and co-partner), receive coverage under the ITP through their binding contracts with the DNR. These binding contracts, called Species and Habitat Conservation Agreements (conservation agreements), are supplementary to the Implementing Agreement. All are to be implemented and administered consistent with the HCP and ITP. Any incidental take of Karner blue butterflies, then, must be consistent with the HCP, the conservation agreements or the Implementing Agreement, the ITP and other applicable federal laws.

The processes for addressing unforeseen or extraordinary circumstances, amending the HCP, reviewing implementation of the HCP and funding are discussed in this HCP and more briefly in the Implementing Agreement. A comprehensive definition of responsibilities for implementation of the conservation program is also included in the Implementing Agreement.

**DNR Commitments.** For the duration of the permit, the DNR, in addition to its conservation and recovery commitments, will provide staff and fund one permanent, full-time employee to administer the ITP on behalf of the DNR and to coordinate implementation of the HCP. The coordinator will be responsible for both coordination of the DNR-owned lands' prescribed management activities with DNR property managers (and other conservation measures committed to by DNR in the implementation agreement) and the collective implementation of the HCP, including compliance audits of HCP partners.

The DNR's Bureau of Forestry will provide funding for the HCP Coordinator's salary and other expenses related to the position, including supplies, travel, information, communication and HCP partner meeting expenses. The DNR will share in some of the administrative and operational needs of the IOC and the partnership.

The DNR will provide or seek funding for DNR support services as described in Part G of Chapter II, as well as the following anticipated needs:

☞ A complement of DNR Region staff including *property managers, foresters and wildlife*

*managers*, and their support staff, will provide comprehensive resource management, master planning, work planning, surveying and monitoring, assistance, information and reporting functions as needed to fulfill the DNR's obligations in implementing the HCP on DNR-managed lands and other lands in the state.

- ☞ The *Land Leadership Team*, the DNR Land Division's senior management team, will provide leadership and guidance. By assuring this HCP is an administrative priority for the division, this team will provide staff and financial support and internal and external visibility and sponsorship for this issue.
- ☞ The DNR *HCP Management Team* is a multi-program operational-level team formed to problem solve situations associated in the ITP, the HCP, the management of DNR properties within the HCP and the DNR's Implementation Agreement.
- ☞ An *insect/butterfly biologist/ecologist* will provide services and training in monitoring, surveying, biological data analysis, liaison to the USFWS and federal recovery team and liaison to DNR property managers and HCP partners.
- ☞ A *data manager/data entry technician* will coordinate and manage the flow of biological and non-biological data.
- ☞ An *NHI Mapping Specialist* will maintain the Biological Conservation Database (BCD) and non-BCD data and produce maps.
- ☞ A *forest manager/ecologist* will be available to consult on forest management as related to Karner blue butterflies, associated species and related habitat issues.
- ☞ DNR *legal counsel* will be available for legal advice and assistance as needed.
- ☞ An *EIS specialist* will be available to provide advice and guidance regarding NEPA/WEPA issues.
- ☞ *Public affairs and education staff* will provide support on an as-available basis to assist with outreach and education activities.
- ☞ A *GIS specialist* will update digital data files and produce data tables and maps.

**Assurances.** Public entities typically do not have complete control in decision making regarding the allocation and dedication of public monies. Through a variety of planning processes, however, they have an opportunity for justifying activities, such as those needed to implement the HCP. The first of those is the *Property Master Planning Process* as governed by Chapter NR 44, Wis. Adm. Code. This process provides for the logical and progressive planning of objectives and activities for management on state-owned, DNR-managed lands.

To the greatest extent possible, *work planning* also ensures the DNR will implement the HCP on DNR-managed lands. Work planning is an official operating procedure in the manual code (synonymous with standard operating procedures) that all DNR programs establish in conjunction with the state's biennial budget process. In the work planning process, individual programs and administrative regions define and agree on priorities, negotiate and agree on work activities and responsibilities, and form cooperative approaches on cross-program and cross-regional issues. Within this process, the DNR has an obligation to perform program reviews. Integrated into the work planning process is a system for establishing performance measures consistent with department goals. Work planning integrates activities and assures that work activities required by law or assumed under approvals are carried out subject to legislative appropriations. The development of *County Forest 10-Year Plans* supports the implementation of the HCP on County Forests much the same way as DNR master plans do on DNR lands.

As discussed in Part D of Chapter II, the following types of monitoring will be performed:

- ☞ compliance auditing,
- ☞ self-monitoring, and
- ☞ effectiveness monitoring.

**Compliance Auditing.** Compliance auditing will ensure that the proposed HCP, including the Implementing Agreement and the individual partner conservation agreements are implemented as written. The DNR will be responsible for conducting this auditing.

**Self-Monitoring.** Self-monitoring will assess whether the prescribed management activities result in the anticipated habitat conditions. It will also assist in assessing the impacts of other conservation measures as described throughout Part F of Chapter II committed to in the Implementing Agreement and individual conservation agreements. It is anticipated that self-monitoring will reflect the results of partner-by-partner implementation and will be performed by individual partners. Partners will be able to support the adaptive management strategy by sharing their observations and findings in at least two ways: (1) annual reports, and (2) information shared with the IOC or HCP Coordinator at the first available time for analysis. This analysis will rely on the timely dissemination of information to affected partners and others, so that it may be applied in their conservation efforts. Each partner will be responsible for their own self-monitoring.

**Effectiveness Monitoring.** Effectiveness monitoring will evaluate the ongoing statewide status of the Karner blue butterfly across partner lands. It will be designed to assess the effectiveness of partners' conservation strategies. The DNR will work with partners to determine appropriate adaptive management options should a significant decline in Karner blue butterfly populations and habitat be detected. The DNR will take primary responsibility for the effectiveness

monitoring process. Most partners, as outlined in individual conservation agreements, will perform the field work on their property as in-kind service.

The HCP identifies a priority sequence for research activities that may benefit Karner blue butterfly conservation or provide more efficient or cost-effective implementation of the HCP. The benefits of these research opportunities will be pursued in three ways:

- ☞ Research in progress or planned by independent sources will be taken advantage of.
- ☞ Research needs found imminent, necessary, or crucial as the result of adaptive management will be pursued as funding becomes available.
- ☞ Research considered valuable but not critical to successful HCP implementation objectives, however which would add value, may be pursued as funding becomes available.

Decisions and funding responsibilities for research needs will be made as the result of the cooperative assessment by the DNR and the partners through the Implementation Oversight Committee (IOC) and its subcommittees. Where beneficial or desired, the USFWS may be consulted. Where HCP partners' research responsibilities may be complementary to the USFWS's federal recovery responsibilities, the initiation and pursuit of research may depend on federal financial support or research cooperation.

## **2. DNR-Partner Species and Habitat Conservation Agreements (Conservation Agreements)**

The Wisconsin Karner Blue Butterfly HCP partners are held together and guided in their participation by binding Species and Habitat Conservation Agreements (conservation agreements). An example of a conservation agreement is included in Appendix D. These agreements have been entered into by and between each partner and the DNR. The conservation agreements form the basis of the DNR's application for the statewide incidental take permit (ITP). With the ITP, the DNR will implement and oversee the statewide Karner blue butterfly conservation program, involving the partners and other landowners and users in the state.

Each conservation agreement is consistent with and tailored to the resources, capabilities and commitments of individual partners. The ITP will constitute a Certificate of Inclusion. Each partner's conservation agreement addresses and details:

- ☞ the lands and activities included in the conservation effort;
- ☞ public outreach and education activities partners agree to implement;
- ☞ any additional conservation efforts a partner intends to engage in;
- ☞ the monitoring, reporting and auditing responsibilities the partners agree to conduct and be subject to during the length of the commitment;
- ☞ the period for which it will bind the partner, as well as any renewal, modification and amendment opportunities under it; and
- ☞ obligations of partners to modify land management or land use activities as a result of adaptive management.

The commitments of the partners are detailed in their individual conservation agreements. Some partners have outlined specific conservation measures in their conservation agreements. Other partners have agreed to follow the guidelines included in Chapter II and Appendix F. Others will do a mix of what is in the HCP and their own approach. All commitments, however, are stated in the partners' conservation agreements, especially in cases where they have chosen to operate differently than what is outlined in the HCP.

For those partners that have chosen to also manage for species other than the Karner blue butterfly, their conservation agreements reflect this commitment; however, *any incidental take of a state or federally-listed species other than the Karner blue butterfly requires a permit or approval*, other than the ITP granted for this HCP, from the DNR and/or the USFWS.

Access to the lands and relevant records of each partner, for the purpose of implementing the conservation program and assuring compliance with the agreement, is described in the conservation agreement. It is necessary for the DNR, and others including the USFWS, to access partner lands for the purposes of auditing and implementing the ITP.

The conservation agreements also include provisions to address the assignment of privileges and the transfer of lands, including the process to address proposed transfer and the role of the Implementation Oversight Committee (IOC) established by the partnership and described on pages 166-170. The transfer of lands or modification of obligations will be addressed by notice to the DNR and the IOC with an opportunity for a partner to explain proposals consistent with the partner's conservation agreements and the Implementing Agreement. The IOC may make recommendations to the DNR which will make final decisions, realizing that modifications to conservation agreements or land holdings may ultimately affect the viability of the statewide conservation effort.

**Remedies.** Finally, the conservation agreements detail the remedies available in the event that a partner violates provisions of the agreement. A partner violating provisions of the conservation agreement may not only lose coverage under the ITP and be subject to prosecution by the USFWS if take is involved, but will also be subject to various civil remedies and damages the DNR may seek for contract breach. Decisions on when to seek such contract remedies by the DNR will involve the IOC. The final decision on conservation agreement enforcement will rest with the parties; therefore, a partner's violation of the conservation agreement will be the DNR's responsibility to enforce. The decision to seek enforcement for an unauthorized take under the ESA will be solely the decision of the USFWS.

The goal of this contractual relationship between the partners and the DNR is that of most service contracts. The parties want to continue their relationship in an amicable and reasonable manner to achieve the goal of the contractual agreement. In this case, both parties want to assure

the conservation of the Karner blue butterfly, but be allowed to reasonably continue land management and use activities. With this species, both can be reached. Few contractual relationships flow without bumps in the road. Minor infractions could take place, but should not jeopardize the completion of the contract or achievement of the goals it was entered into to achieve. Therefore, levels of contract enforcement or administration are common. These may include:

- ☞ notification to fully comply, pointing out an infraction not needing correction, with no further pecuniary remedies or loss of ITP coverage;
- ☞ notification to comply, and correction of an infraction within a certain period of time, with no further pecuniary remedies or loss of ITP coverage;
- ☞ notification of an infraction and the seeking of pecuniary damages, but *no* loss of ITP coverage; or
- ☞ notification of an infraction and the seeking of pecuniary damages *with* loss of ITP coverage.

These stages of contract administration cannot be well-defined. Sound judgment and understanding must be included in contract administration and is an obligation of both the DNR and the partners. Strict and unreasonable administration and enforcement on the part of either party might assure that the goals of the agreement cannot be reached.

The partners suggest and it is reasonable that the remedies be addressed similar to the following:

1. There be levels of violations, such as:
  - a. Minor or incidental;
  - b. Repeated violations; and
  - c. Intentional actions resulting in destruction of Karner blue butterflies and/or Karner blue butterfly habitat which jeopardizes the ITP.
2. The remedies for violation of the conservation agreements may be applied similar to the following:
  - a. Minor or incidental violations may be addressed by verbal or written warnings;
  - b. Repeated violations, especially those involving the take of Karner blue butterflies, should result in the suspension from the partnership and ITP coverage until satisfactorily corrected; or, ultimately expulsion from the partnership and ITP (e.g., after two or three offenses); and
  - c. Intentional violations -- especially those involving take of the Karner blue butterfly -- should, in some cases, lead to temporary suspension from the partnership until corrected, or expulsion and loss of ITP coverage (e.g., the knowing delay in complying with a reporting requirement, although intentional, is not as significant as an intentional take of Karner blue butterflies that may jeopardize the statewide effort.)

This HCP partnership relies and must be based on an open and honest relationship that encourages on-going communication. Immediate notification to the DNR of any violations of the

conservation agreements, especially if they involve an unauthorized take of the Karner blue butterfly, is expected. Likewise, the reaction of the DNR to the information and notice should recognize this working partnership and the efforts to jointly conserve and protect the species. Responses should be molded to encourage the process to mitigate or address take in a reasonable and responsible manner through reasonable and realistic contract administration and remedy selection.

At any time that a partner engages in unauthorized take of Karner blue butterflies (i.e. take not covered by the ITP), the issue of ESA enforcement by the USFWS arises. This may result in civil or criminal penalties being assessed against the partners involved. The enforcement will be at the discretion of the USFWS.

Any contractual administration, as will be the case with the conservation agreements, must be flexible and have the latitude to address infractions or violations of agreements in a manner which includes the exercise of sound judgment, consideration of the resource, and furtherance of the conservation goals of the agreement. This conservation plan relies on continuing activity by the partners. Similarly, the continuation of activity by the partners may rely on their authorization under the ITP. Partners often depend on employees and agents, that they cannot constantly supervise, to conduct land management and use activities. Conservation measures in contracts and directions for conducting activities will, in large part, assure they conform to the ITP. Through the IOC and other partners and participants, a wide variety of views and experiences will be available to assure sound, reasonable and equitable administration and enforcement of the agreements, including any remedies that may be sought consistent with them.

### **3. Implementation Oversight Committee (IOC)**

The Implementation Oversight Committee (IOC) is a subset of partners and non-partner cooperators which primarily exists to represent the partners' interests during the permit period. Non-partner participation is encouraged to provide a broader perspective of shared goals for successful conservation of the Karner blue butterfly and its habitat. There are four levels of participation in which the IOC will act:

- 1) advising the DNR,
- 2) making decisions on behalf of the partners,
- 3) actively planning and providing services, and
- 4) making recommendations to the partnership and the DNR.

Each of these roles is briefly discussed below.

The IOC will act in an advisory capacity, to provide guidance to the "permit administrator"

(DNR) in any and all matters pertaining to the HCP. The implementation activities which the IOC, in its advisory role, will review and offer recommendations to the DNR include the following:

- ☞ the approval of new partner applications (Note: ITP coverage for new partners requires issuance of a Certificate of Inclusion by the USFWS);
- ☞ the withdrawal of partners from the HCP and termination of conservation agreements;
- ☞ the transference of incidental take authority by way of the transfer of land rights (as defined in the agreements);
- ☞ HCP review process and permit renewal;
- ☞ the approval of amendments and changes to HCP;
- ☞ disposition of funds common to the partnership [Note: This does not include funds and in-kind services belonging to an individual partner or the state.];
- ☞ review of partner audit reports and consideration of remedies for non-compliant performance (agreement violations);
- ☞ remedies for conservation agreement violations;
- ☞ public relations and communications; and
- ☞ adaptive management and research guidance.

The IOC will act as a decision maker on behalf of the partnership in some matters, including:

- ☞ IOC administrative issues, such as membership, IOC operating rules and processes;
- ☞ Establishment of IOC operating ground rules/rules of conduct;
- ☞ Composition and assignment of IOC subcommittee responsibilities and operations; and
- ☞ Creation of programs for annual HCP partnership meetings.

The IOC will play an active role in planning and providing services and products in some areas, by both working as a committee and through IOC working subcommittees. Some of these areas are:

- ☞ developing funding strategies and coordinating and seeking funding;
- ☞ providing guidance on outreach and education activities;
- ☞ providing materials and guidance on public relations and communications issues and activities; and
- ☞ in conjunction with the HCP Coordinator, developing, planning and co-hosting periodic HCP partner meetings.

In matters of direct concern for all partners, the IOC will assess available information and make recommendations or offer alternatives to the partners regarding matters requiring a full partnership decision. In these cases, the Articles of Partnership will be followed for partner decision making and voting. Issues for entire partnership include:

- ☞ issues governing changes to IOC decision making process and authority, and
- ☞ amendments to the HCP including ESA listing status changes.

**IOC Leadership and Partner Participation.** The DNR performs two roles for the HCP: permit administrator and partner. As a partner, the DNR will be a permanent member of the IOC. The DNR HCP Coordinator will facilitate IOC meetings; a different DNR representative, however,

may sit on the IOC as the voting member representing the DNR as a partner.

The IOC will be composed of one member from each type of partner. The initial entity groups which will be represented are:

- ☞ utility managers,
- ☞ road rights-of-way managers,
- ☞ forest industry,
- ☞ county forests,
- ☞ nonprofit conservation groups,
- ☞ the DNR, and
- ☞ the DATCP.

Members may be added in the future as new entity groups join the HCP. Membership will rotate on a staggered basis among partners. Each partner should consider it a serious responsibility of membership in the HCP to contribute their time to serve at least one term on the IOC.

Representation of their interests will depend on their participation.

A partner will chair the IOC. Elections will be held every two years to determine the chair person. Several members of the IOC will be "sub-committee chairs" of specific areas. They will not be involved in the day-to-day operations of the HCP, but will serve an advisory function for major issues brought to them by the HCP Coordinator, the IOC, or the partners. The sub-committees' role will mostly be to research issues (often outside the partnership), develop information on issues, communicate information to those concerned and lead discussions at IOC meetings.

Recommendations for IOC sub-committee areas include:

- ☞ approval of new partners,
- ☞ approval of modifications to the HCP,
- ☞ disposition of funds,
- ☞ auditing and non-compliance,
- ☞ public relations and communications, and
- ☞ adaptive management and research guidance.

Any qualifying partner may sit on the IOC. This includes new partners added after the ITP is granted and while the HCP is being implemented.

**IOC Representation by Non-Partners.** The development of the Wisconsin Karner Blue Butterfly HCP was a team effort. The HCP partners recognize the significant contributions of those who participated even though they did not represent partners; especially the Wisconsin Audubon Council, the Sierra Club and the Wisconsin Woodland Owners Association. Initially, these three non-partner participants are encouraged to be formal members on the IOC in the same manner as they were in the HCP development process.

Consistent with the Articles of Partnership, these non-partner IOC members will participate in an advisory capacity; with their opinions being considered in consensual discussions and decision making. Non-partner members will not vote with partners on partner-only decisions. Non-partners will not be eligible to chair the IOC, as described elsewhere in this subsection.

Other non-partners are welcome to attend public-noticed IOC meetings as observers, but will only be allowed to passively participate, as IOC meetings are not public forums for general discussion, but working committee meetings. Where it would further the goals of the HCP and the IOC, other non-partners may be considered for formal membership, as approved by the IOC.

The special advisory role of the USFWS in the HCP development process is encouraged to continue as an advisory member to the IOC. Direct participation by the USFWS in IOC meetings is welcome, but not mandatory.

**IOC Operating Principles.** This section outlines general operating principles for the IOC. All IOC meetings will be noticed as a public meeting. The IOC will operate in an environment respecting anti-trust policies (see HCP Partnership anti-trust statement in Appendix C), and the IOC and the HCP partners will continue to follow the Articles of Partnership.

General IOC and HCP Team expenses will be the responsibility of the partners. The first IOC will develop a funding method to recommend to the Partnership. (Approval may not wait until the first annual HCP partnership meeting.) Travel expenses will be the responsibility of individual representatives.

Specific IOC operating protocols and decision-making processes will be developed by consensus by the first IOC; these protocols and processes will be implemented on a trial basis, until voted on at the first annual HCP partnership meeting. Alternatives will be discussed until agreement is achieved. Consensus will be the first course of decision-making. If consensus cannot be reached in a reasonable amount of time, a partner vote, consistent with the Articles of Partnership, may be called by the permit administrator (DNR) representative presiding over the HCP partnership annual meeting.

Qualifications to be a voting member of the IOC include:

- ☞ a nominee must be a full-time, permanent staff of a HCP partner bound by a current conservation agreement or in the case of the DNR, the HCP Implementation Agreement; and
- ☞ a nominee will reasonably possess the qualifications and capabilities to represent the entity group's interest.

IOC members will be nominated and voted on within each entity group by a process agreeable to the partners in each entity group. It is recommended that IOC members will serve a one or two-year term. A method will be devised to attempt to have overlapping participation of members. At the annual HCP partnership meeting, entity groups will vote for IOC member successors for those members whose terms will expire prior to the next annual meeting. An individual can act as an entity representative for the entire permit period if continuously elected.

When an IOC Chair needs to be selected for an upcoming term, [IOC representatives to serve under this chair](#) will vote for an IOC Chair from among the elected IOC members not outgoing prior to the next annual HCP partnership meeting. The future IOC Chair-elect will be elected [prior to the permit date \(September 27, \\_\\_\\_\\_ \) in which his/her term as chair begins. An IOC member can serve up to 4 years as chair, but no more than two years consecutively.](#)<sup>A</sup>

[To insure a quorum at IOC meetings, the following procedure applies: In the event that an IOC representative cannot attend a scheduled IOC meeting, he/she will ask his/her alternate to attend. If the alternate is not available to attend, the IOC representative will make every reasonable effort to find a substitute from among other partners members in their entity group, or another employee of their organization or company who is informed and aware of the HCP. The absent IOC representative will notify the IOC Chair and the HCP Coordinator by personal conversation, telephone, email or in writing, of the name and association of their one time IOC meeting substitute, and their transfer of voting proxy to this person.](#)<sup>A</sup>

If a new HCP partner enters into conservation agreement with the DNR and a logical entity group does not exist for it to participate within, the IOC may recommend that the partnership create an additional entity group. IOC membership will follow standard protocol unless IOC recommends an alternative to the HCP partnership. Approval of the creation of an entity group will be voted on by all partners at the next annual HCP meeting.

**IOC Sub-committees.** IOC sub-committees will provide focal points for and distribution of responsibility associated with preparation and leadership on key IOC issues. Sub-committees will primarily investigate action items between IOC meetings and develop recommended courses of action. All members of the IOC can serve as sub-committee chairs. IOC sub-committee chairs will interface with individuals and organizations outside the IOC to gather information essential to IOC matters and discussion (e.g., seeking opinions of other entity members or others regarding the appropriateness of a corrective action or remedy involving an agreement violation; investigating science-related issues with outside experts; or seeking financial accounting data or funding information from the funding sources, such as a foundation or the DNR). IOC sub-committee chairs will coordinate and/or present informational field trips or presentations which enhance the knowledge of IOC members and participating guests. Sub-committee assignments will be made by a process devised by the first IOC.

#### 4. Future Applications for Partner Status or Participation

**Application Processing.** The participation plan discussed in Part F of this chapter provides that those landowners or users requiring permit coverage will be offered the opportunity to join this conservation effort either as a full partner or a one-time sub-permittee. A person or entity desiring to join as a partner must be willing to assume all obligations and duties of a partner, and will in turn, obtain the benefit of continued coverage and a voice in the continuing administration and implementation of the ITP. Under either category, the person or entity wishing to join the conservation program will seek to enter through an application and review process.

If partnership status is desired, submission of an application and information required of other partners (i.e. "homework") will be required. The application process will be as follows:

- 1) An applicant will submit required information and application fee along with an application.
- 2) The IOC and the DNR will review application materials and make a recommendation on its approval.
- 3) The DNR will work with the applicant to develop a conservation agreement, consistent with the HCP (i.e. following the template in Appendix D) and the Implementing Agreement.
- 4) The USFWS will review the application materials and draft conservation agreement.
- 5) If it is determined that the activities outlined in the application and conservation agreement will support the conservation effort, the USFWS will extend ITP coverage to the new partner through issuance of a Certificate of Inclusion.

If a person or entity desires coverage under the ITP on a one-time basis, the following process will apply:

- 1) The person or entity will submit an application (see example in Appendix D) and required fees.
- 2) The IOC and the DNR will review the application and make a recommendation on its approval/denial.
- 3) The USFWS will review the application and IOC/DNR recommendations.
- 4) If it is determined that the activities outlined in the application will support the conservation effort, the USFWS will issue a Certificate of Inclusion to the applicant.

This application process may also be made available to entities that wish to engage in activities that are subject to "best management practices," such as governmental bodies engaged in right-of-way maintenance. The conservation agreement will include the restrictions on activities, if applicable, and the Certificate of Inclusion conveys ITP coverage. Any one-time or best management practice participant (sub-permittee) who violates the restrictions in the conservation agreement will no longer be covered under the ITP and will be subject to enforcement action by the USFWS. Future partners will be subject to binding conservation agreements and subject to the administration and enforcement mechanisms described in this chapter (pages 171-180).

The goal of allowing development, land use and land management activities to continue, requires

that those projects which may result in a permanent loss of habitat be addressed. Those projects may continue, and may be authorized, if the applicant agrees to a mitigation plan. Such a plan could include working with other partners or persons on Karner blue butterfly habitat maintenance or enhancement. It may also be possible, where a mitigation strategy is not viable, that the applicant may be allowed to aid or participate in the Karner blue butterfly conservation program by conducting or paying for activities such as the administration of programs, public outreach and education, or research and data collection efforts.

The process of reviewing and acting on applications and requests for partner status will be consistent with the committee assigned the administrative task of reviewing and recommending approval or denial. It may be possible that the processing can take place at a county level consistent with the intent to administer the program on a county-by-county basis. The complexity of the activities and action requested may determine whether the application or request for partner status is reviewed at a county or state level.

**Fees.** Any person or entity, except a governmental unit, wishing to achieve coverage under the ITP, as an applicant or partner, must pay a \$50.00 non-refundable processing fee. A fee must also be paid to the partnership by the applicant, except if the applicant is a governmental unit, before the USFWS will issue a Certificate of Inclusion or the DNR will enter into a conservation agreement. The fee structure is included in Appendix D.

### **5. Incidental Take Permit Period**

Each partner's commitment to this joint conservation effort, as indicated in individual partners' conservation agreements, is for a period of ten years, with the opportunity to terminate or extend the period. The ITP must recognize how the conservation program could change at any point in time.

Opinions about permit length were gathered as part of the initial "homework" completed by HCP partners. The majority of the partners expressed a desire to commit to the conservation program and ITP for a minimum of five years with the option to renew or extend their commitment and the ITP beyond the initial 5-year period. One-half of the partners expressed a willingness to commit to Karner blue butterfly conservation and request an ITP for a period of ten years or more. Based upon partner responses, the DNR is applying for a 10-year ITP with the opportunity to extend the period of coverage.

An important consideration in establishing the permit period was the effect that down-listing or delisting the Karner blue butterfly would have on the need for an ITP. The partners and participants expect that through their significant efforts the species can and will reach that stage of population and assurance of continued health that it should no longer be considered an endangered species. If the species is down-listed to threatened status, the USFWS may consider

issuing a section 4.D. rule, pursuant to the ESA, that would exempt certain types of take activities from requiring permits. It is the intent of the DNR and the partners to request such treatment if/when down-listing occurs. If the species is delisted and no longer of endangered or threatened status, there is no longer a legal need for the HCP and ITP. Therefore, the ITP must provide that any permit period would terminate and not be necessary if the species is delisted or reclassified as threatened with take activities of the partners allowed under a section 4.D. rule.

## **6. Incidental Take Permit and HCP Amendments**

Amendments to both the ITP and the HCP can be made after the effective date of the ITP. Amendments are anticipated to fall into two categories: major and minor. Major amendments will require amendment of the ITP and related documents as appropriate. Minor amendments to the HCP or ITP will be handled administratively and coordinated internally between the DNR and USFWS. With the adaptive management strategy being used, it is anticipated that amendments will be infrequent, if needed at all.

**Major Amendments to the ITP and HCP.** Major amendments to the ITP and HCP proposed by the DNR will be processed by the USFWS in accordance with the ESA and permit regulations of 50 CFR Parts 13 and 17. Amendments to the ITP are needed when the DNR wishes to significantly modify the conservation program as described in the HCP (i.e., if the net effect on the species involved and level of take are significantly different than that analyzed under the original HCP and USFWS decision documents). Examples of modifications that would require amending the ITP include, but are not limited to:

- ☞ the addition of federally-listed species to the permit that were not previously addressed in the HCP;
- ☞ substantive reduction in the total acres that have been committed to the conservation program, if the reduction will significantly reduce the conservation effort to the extent its goals cannot be attained; and
- ☞ adjusting any mitigation to address "unforeseen circumstances" (unless adjustment is minor; see discussion of "No Surprises rule" on pages 175-179).

To process a major ITP or HCP amendment, the following procedures will be followed:

1. The amendment will be requested by the DNR, after discussion with the partners and the IOC, via a dated letter signed by the DNR. The letter shall contain full justification and supporting information relative to the proposed amendment and will discuss the willingness of the partners to modify their commitments.
2. If necessary, a revised or new HCP, Implementing Agreement or NEPA compliance document will be prepared. Such revisions, or new documents may be necessary if the amendment involves an action that was not addressed in the original HCP, Implementing Agreement, or NEPA analysis. If the conditions necessitating the amendment were addressed in the original documents, then only amendment of the permit itself and appropriate conservation agreements is generally needed.

Note: The USFWS is responsible for completing environmental compliance documents under NEPA, although the DNR may assist with this process.

3. Any changes to the Implementing Agreement will be reviewed by the USFWS's Field Solicitor's Office upon request by the USFWS's Regional Office.
4. Procedurally, the permit amendment may be treated the same way as the original permit application (i.e., it will be afforded public review via notice in the Federal Register; modified, and issued or abandoned based on this review). The final decision will be noticed in the *Federal Register*, if the amendment changes the scope of the permit and/or permitted activities or the level of take.
5. The USFWS will conduct an internal section 7 consultation on approved amendments, as appropriate.
6. A written record of approved amendments will be appended to (or replace) the original document(s) (Implementing Agreement, HCP, EIS) as appropriate.

**Minor Amendments to the ITP and HCP.** Minor changes or amendments to the ITP or HCP can be completed administratively without amending the permit. Minor amendments are those that do not substantially modify the conservation program in the HCP. To qualify as a minor change, the net effect of the proposed change on the species involved cannot be significantly different than that analyzed under the original HCP and USFWS decision documents. Examples of minor changes include, but are not limited to:

- ☞ revisions to survey and monitoring protocol,
- ☞ changes in the total acres that have been committed to in the conservation program that do not otherwise alter the effectiveness of the HCP, and
- ☞ changes in land ownership that do not otherwise alter the effectiveness of the HCP.

Minor amendments to the HCP and ITP will involve the following procedures:

1. The proposed HCP amendment, after discussion with the partners and the IOC, along with supporting information and justification will be drafted by the DNR and forwarded to the USFWS for review.
2. The USFWS will review the proposed HCP amendment and coordinate suggested modification (if any) with the DNR. If the USFWS and DNR agree on the amendments, the DNR will draft the final HCP amendment, including necessary and appropriate amendments to conservation agreements, for approval by the USFWS.
3. A written record of approved HCP amendments will be made and the amendments appended to the HCP.
4. The USFWS will amend the ITP as appropriate to reflect the HCP amendments.

The USFWS will retain its right to amend the permit for just cause at any time during the permit term, upon written finding of necessity.

## **7. Incidental Take Permit Renewal**

At the end of the permit period, the DNR may choose to request a renewal or extension. The DNR will work with the USFWS and partners to identify any information needed to extend the ITP. Any request for renewal or extension will be in writing and will comply with any applicable USFWS permit application guidelines.

## **8. USFWS Habitat Conservation Plan Assurances ("No Surprises" Rule)**

The USFWS's final rule, entitled Habitat Conservation Plan Assurances ("No Surprises" Rule) dated February 23, 1998, (CFR 63(35):8859-8873) is intended to provide economic and regulatory certainty for non-federal property owners with approved and properly implemented HCPs in the event of "unforeseen circumstances." HCPs must provide provisions for addressing both "unforeseen" and "changed circumstances" not already addressed in the conservation plan. The provisions of the rule and their application to this HCP are discussed below.

### **Unforeseen Circumstances**

Pursuant to the rule, *unforeseen circumstances* are changes in circumstances affecting a species or geographic area covered by a conservation plan that could not reasonably have been anticipated by the plan developers at the time of the HCP's negotiation and development, and that result in a substantial and adverse change in the status of the covered species. Unforeseen circumstances, therefore, would include natural disasters of a scale or magnitude that would not be anticipated under normal circumstances. Events such as tornadoes or wildfires that might reasonably be anticipated to occur in Wisconsin would not meet this definition; however, events such as a wildfire of unanticipated size, an earthquake or other catastrophic event that would not normally occur in Wisconsin would meet the definition of unforeseen circumstances.

### **Changed Circumstances and Conservation Measures to Address Them**

Unforeseen circumstances should not be confused with *changed circumstances*. Changed circumstances are changes in circumstances affecting the Karner blue butterfly within the high potential range, the lands included in the HCP that are subject to partners conservation agreements and that can reasonably be anticipated. Changed circumstances not already covered in other sections of the HCP that may occur during the permit period will be addressed by the DNR, USFWS and affected partners in the manner presented in Table 2.23 (pages 177-178).

**Changed Circumstances Not Provided for in the HCP.** In the event of *changed circumstances* with no conservation measures provided for in the plan, the USFWS will not require any conservation or mitigation measures above and beyond what is provided for in the HCP (and associated agreements), without the consent of the permittee and affected partner(s), provided the HCP is being properly implemented. The USFWS will coordinate and work cooperatively with the DNR and affected partners to explore ways that the operating conservation program can address the impact.

### **Unforeseen Circumstances and Measures to Address Them**

Pursuant to the Rule, should *unforeseen circumstances* occur the following steps will be taken:

1. The USFWS will demonstrate that unforeseen circumstances exist and determine whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the Karner blue butterfly.
2. If the USFWS determines that additional conservation and mitigation measures are necessary to respond to unforeseen circumstances, the USFWS will work cooperatively with the DNR and appropriate partners on additional conservation measures/mitigation

measures that may be taken to address the impacts however:

- A. Requested modifications will be limited to the HCP's operating conservation program and maintain the original terms of the conservation plan to the maximum extent possible.
- B. The USFWS will not ask for more lands, financial compensation, or additional restrictions on land use, or other natural resources otherwise available for development or use without the consent of the DNR, who in turn, will obtain consent from the HCP partners as appropriate.

**Table 2.23 Changed Circumstances and Assessment and Management Adjustments<sup>3</sup> to Address Them**

Changed Circumstance	Assessment and Management Adjustments
Forest fires and other wildfires of anticipated degrees and fire suppression activities related to them	<p><u>As soon as possible, and prior to any management actions, on affected land which may cause added impacts, the partner will assess the impacts to the Karner blue butterfly.</u><sup>1</sup> A corrective action plan will be developed if and when the assessment concludes the event negatively affected occupied habitat in a manner not reasonably expected under management and use of the land without the event contributing to changed circumstances. If KBB previously occupied the site, do a post-impact survey to assess KBB and habitat conditions. <u>If KBB did not occupy the site or if occupation is unknown, do a post-impact survey when practical or when the existing monitoring program normally requires a survey. If the impact of the event results in the creation or expansion of habitat, and the habitat is a new site, the partner will report the new site to the HCP Data Manager for inclusion in the monitoring pool.</u></p> <p><i>Table continued on the next page...</i></p>

Table 2.23 Continued...

	<a href="#"><u>On the survey form the partner will note that the site is a “changed circumstance site”, that it is a “post-impact survey”, and explain findings per the protocol. The partner will submit these findings with their annual report on the Changed Circumstances Report form in the year in which the event occurred. If the post-impact survey is not done in the year of the event the partner will submit an amended report in the year the survey and corrective action plan were completed.<sup>1</sup></u></a>
Natural weather events such as tornadoes and flooding	Same procedures as for forest and other wildfires
<del>Gypsy Moth Infestation<sup>2</sup></del>	<a href="#"><u>See Amendment for deletions</u></a>

## Partner Assurances

The DNR and HCP partners acknowledge that the assurances provided by the rule are extended to this HCP provided the permittee and partners are properly implementing the HCP, Implementing Agreement, associated conservation agreements and the ITP.

**Processing Conservation Plan Changes as a Result of Unforeseen or Changed Circumstances.** Changes to the conservation program will be processed as amendments to the ITP and /or HCP, as appropriate, with commensurate changes to partners' conservation agreements, as needed.

[\*\*Relationship of Changed Circumstances to the HCP's Adaptive Management Strategy<sup>1</sup>\*\*](#) In the event of changed circumstances that may be adequately addressed through the adaptive management strategy, the HCP Partnership will respond to those changed circumstances, as specified in and consistent with the HCP, Implementing Agreement and associated conservation agreements, during the life of the ITP.

The changed circumstances noted in Table 2.23 (pages 177-178) will be addressed in the context of the adaptive management strategy outlined in this HCP.

Among other things, adaptive management is intended to detect changes in Karner blue butterfly populations and habitat over time. The process is designed for normal circumstances, to observe and analyze the results of management activities and treatments. This is a relatively long-term view looking at cumulative effects. In contrast, changed circumstances are the result of a short-term or real-time event, the adverse effects of which may be realized simultaneous to the event. If the event negatively affected occupied habitat in a manner not reasonably expected under management and use of the land without the event, a process for appropriate and available corrective action will result as a normal application of the adaptive management process. The same trigger points for action that apply to normal circumstances of adaptive management, will likewise apply to changed circumstances where appropriate.

***The “Wisconsin Karner Blue Butterfly Habitat Conservation Plan Changed Circumstances Report Form 2002 (Draft)”, 01/28/2002 revision, page 1-2, is replaced with 01/19/05 revision.***

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